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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Assess and  
Revise the Regulation of Telecommunications  
Utilities

R. 05-04-005

Rulemaking for the Purposes of Revising  
General Order 96-A Regarding Informal  
Filings at the Commission

R. 98-07-038

**OPENING COMMENTS OF SUREWEST TELEPHONE (U 1015 C)**

**ON**

**OPINION CONSOLIDATING PROCEEDINGS, CLARIFYING RULES  
FOR ADVICE LETTERS UNDER THE UNIFORM REGULATORY FRAMEWORK,  
AND ADOPTING PROCEDURES FOR DETARIFFING**

**AND**

**OPINION ADOPTING TELECOMMUNICATIONS INDUSTRY RULES**

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August 13, 2007

## I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, SureWest Telephone (U 1015 C) ("SureWest") hereby offers its opening comments on two proposed decisions in the now-consolidated docket addressing the Uniform Regulatory Framework ("URF") and the procedures governing informal filings for telecommunications carriers at the Commission. As reflected above, these dockets are R.05-04-005 and R.98-07-038.

On July 23, 2007, the Commission issued a pair of companion proposed decisions in this consolidated proceeding. First, the Commission issued the Proposed Decision of Commissioner Chong Consolidating Proceedings, Clarifying Rules for Advice Letters Under the Uniform Regulatory Framework, and Adopting Procedures for Detariffing. As its title suggests, this Proposed Decision addresses tariffing issues under the URF structure. For the sake of clarity, SureWest will refer to this Proposed Decision as the "URF Tariffing PD." Also on July 23, 2007, the Commission issued the Proposed Decision of Commissioner Chong Adopting Telecommunications Industry Rules. This Proposed Decision would promulgate rules governing advice letter filings and tariff issues for the telecommunications industry generally. This Proposed Decision would revise the Commission's General Order ("G.O.") 96-B by adopting Telecommunications Industry Rules attached as Appendix A to the Proposed Decision. SureWest will refer to this Proposed Decision as the "G.O. 96-B PD." Given the large extent to which these proposed decisions are inter-related, SureWest offers this single set of opening comments on both proposed decisions.<sup>1</sup>

In general, SureWest supports the tariffing regime contemplated by these two proposed decisions. The URF Tariffing PD correctly concludes that, subject to certain limited exceptions, URF carriers should be permitted to detariff their services. As this proposed decision confirms, URF tariffing reforms – including the option of detariffing – should be available to ILECs, CLECs, and IXC's alike. However, the procedures governing permissive detariffing must be refined in certain respects to avoid imposing undue restrictions or interpretive ambiguities on carriers pursuing detariffing. SureWest agrees that detariffing

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<sup>1</sup> On Friday, August 10, 2007, Chief ALJ Minkin also issued an order consolidating the proceedings. The Commission's Docket Office has confirmed that a single set of comments is therefore appropriate.

1 should be permissive, but there is no reason or justification for requiring detariffing to take place within an  
2 18-month window. Consistent with the light-handed regulatory philosophy underlying the URF structure,  
3 each URF carrier should have the flexibility to detariff its services at any time, based on the unique market  
4 and business considerations that each carrier faces.

5 The limitations and restrictions on permissive detariffing should also be revised in certain respects.  
6 Since SureWest does not have a separate "resale tariff," the prohibition on detariffing "resale services" must  
7 be clarified to ensure that this "resale" exception is not interpreted to include retail services. Similarly, the  
8 exception for "provisions pertaining to a Utility's obligations under state or federal law" is overly broad,  
9 and it should be removed or clarified. Further, rather than imposing a 30-day notice and "opt out"  
10 requirement on term contracts for detariffed services, the Commission should rely on contract law to define  
11 the boundaries of parties' rights and obligations under their service agreements. The three-year web  
12 archiving requirement is also unreasonable, and it should be eliminated.

13 Like the permissive detariffing proposal, SureWest supports the Commission's proposal to process  
14 URF carriers' advice letters under "Tier I" of G.O. 96-B. SureWest does not oppose the proposal to allow  
15 limited protests to URF advice letters, and SureWest understands that remedial actions would have to be  
16 taken if an advice letter failed to meet the standards under Tier I. However, the grounds for protest of URF  
17 advice letters should be limited to those reflected in sub-sections (1) through (4) of G.O. 96-B, General  
18 Rule 7.4.2. Sub-sections (5) and (6) of the G.O. contain broad language which is inconsistent with the  
19 regulatory streamlining under the URF structure. Allowing open-ended or policy-based protests of this sort  
20 will only inject uncertainty and complexity into the processing of URF advice letters. SureWest offers  
21 other limited revisions to the proposed rules in the G.O. 96-B PD, as discussed herein.

22 Finally, SureWest supports the Commission's decision to uphold the conclusion in Ordering  
23 Paragraph 21 of D.06-08-030 that carriers should be permitted to remove "asymmetrical marketing,  
24 disclosure, and administrative requirements" by advice letter. The Commission has adopted appropriate  
25 limitations on this authority, but has recognized that the removal of asymmetric regulations is critical to  
26 maintaining an even playing field in the telecommunications marketplace.

27 **II. SUBJECT TO CERTAIN REFINEMENTS, THE COMMISSION'S PERMISSIVE**  
28 **DETARIFFING PROPOSAL IS REASONABLE, AND IT SHOULD BE ADOPTED.**

1           **A.     Permissive Detariffing of Services Subject to URF Pricing Flexibility is**  
2           **Consistent with the Statutory Mandates and the Competitive Findings**  
3           **Underlying the URF Structure.**

4           The URF Tariffing PD correctly concludes that the statutory criteria for detariffing have been met  
5 based on the record evidence submitted in Phase I of the URF proceeding. As the URF Tariffing PD  
6 observes, the record in Phase I amply demonstrates that the URF ILECs lack market power in the market  
7 for voice communications, and that competitive alternatives to traditional voice service are rapidly  
8 growing, while traditional wireline access lines are declining. (URF Tariffing PD, at p. 40). The  
9 Commission has thoughtfully weighed the evidence and concluded that the competitive market dynamics  
10 for voice services in California satisfy the standards under Public Utilities Code Section 495.7(b).  
11 Similarly, the Commission correctly reasons that existing statutory and regulatory safeguards are sufficient  
12 to meet the detariffing prerequisites under Public Utilities Code Sections 495.7(c) and 495.7(d). SureWest  
13 also supports the legal conclusion in the URF Tariffing PD that Public Utilities Code Section 495.7 does  
14 not authorize the Commission to institute blanket, mandatory detariffing. In general, the Commission's  
15 detariffing proposal is reasonable, and it should be adopted.

16           **B.     Regulatory Parity Demands that Permissive Detariffing Authority be Extended to All**  
17           **URF Carriers.**

18           SureWest supports the Commission's conclusion that permissive detariffing should be an option for  
19 all URF carriers, including the large and mid-sized ILECs, all CLECs, and all IXC. *See* URF Tariffing  
20 PD, at p. 6. These market participants are subject to competition from each other, as well as from wireless  
21 carriers and VoIP providers. Like the URF ILECs, IXCs and CLECs are facing significant and growing  
22 competition from lesser-regulated providers. All of the URF reforms, including permissive detariffing,  
23 should apply to these carriers to the same extent as they apply to the ILECs.

24           **C.     Permissive Detariffing Should Not Be Confined to an 18-Month Period.**

25           Although the URF Tariffing PD properly rejects mandatory detariffing, it states that "an URF  
26 carrier may not detariff existing services / promotional offerings / bundles 18 months after the effective  
27 date of this decision." (URF Tariffing PD, at p. 53). There is no reason or justification for limiting carriers'  
28 detariffing options in this way and the URF Tariffing PD does not provide any reasoning in support of its  
proposal to force carriers to make decisions about detariffing within an 18-month window. The 18 month  
proposal appears to be drawn from the parties' comments related exclusively to the time period necessary

1 for the companies to implement a mandatory detariffing requirement. However, if detariffing is to be  
2 permissive, this limitation should be removed from the proposal, and carriers should be permitted to  
3 detariff their services as they see fit at the time that makes most sense for their business models and market  
4 dynamics. This will also allow rate of return carriers that opt into URF later the opportunity to detariff, as  
5 an 18 month window would have to be reconsidered each time a new carrier enters URF.

6 The policy underlying permissive detariffing is to give additional regulatory flexibility to carriers  
7 as they compete with lesser-regulated and unregulated providers. The 18-month window for detariffing  
8 contradicts this policy. While most URF carriers will naturally avail themselves of the option to detariff,  
9 there is no reason to force a decision upon these carriers within any particular timeframe. As the URF  
10 Tariffing PD makes clear, carriers will no longer benefit from tariffed limitation of liability provisions or  
11 the filed rate doctrine when they move toward detariffing. This removal of tariff protections will have to be  
12 carefully evaluated before services are detariffed, and carriers will have to ensure that the contractual  
13 processes and arrangements that replace tariffs are in place and sufficient to reflect the rights and  
14 obligations of the parties.

15 Moreover, for parties such as SureWest who have little experience in detariffing, there may be  
16 good cause to wait to see how other companies, who have experience in detariffing in other states,  
17 implement detariffing in California. Companies that have already been through detariffing in other states,  
18 may have fewer questions about the process and the potential issues. SureWest is not in this position, and  
19 some additional caution regarding the timing of detariffing may therefore be warranted.

20 **D. The Exceptions to Permissive Detariffing Should Be Clarified.**

21 The URF Tariffing PD appropriately recognizes that not all services can be detariffed at the present  
22 time. However, the specific language used to describe the exceptions to permissive detariffing must be  
23 clarified in certain respects to ensure that the exceptions will not swallow the general rule permitting  
24 detariffing.

25 First, the Industry Rule 5 in G.O. 96-B PD lists "resale service" among the types of service that are  
26 not subject to detariffing. (G.O. 96-B PD, Appendix A, at p. 6). In addition, "resale service" is defined as  
27 "a tariffed service that a carrier offers to another carrier for resale." (G.O. 96-B PD, App. A, Industry Rule  
28 1.10, p.2). At least in SureWest's case, this reference to resale is ambiguous and overly broad. It is

1 certainly true that services sold to other carriers under a resale tariff are not subject to full pricing flexibility  
2 under D.06-08-030. However, SureWest does not have a separate resale tariff under which carriers can  
3 purchase and resell services. To be clear, SureWest allows carriers to purchase its retail services and resell  
4 such services to their customers. However, for SureWest, this is handled through interconnection  
5 agreements for carriers desiring this option. Nevertheless, carriers may well be subscribing to certain  
6 services from SureWest's retail tariff and reselling those services. SureWest wants to ensure that the  
7 reference to "resale service" in Industry Rules 1.10 and 5 will not negate its ability to detariff typical retail  
8 services that are subject to pricing flexibility under D.06-08-030. This result would be contrary to the  
9 Commission's permissive detariffing proposal. To clarify, the Commission's intent on this matter, the  
10 reference to resale service definition should be made clear, if not in the definition itself, then within the  
11 body of the decision.. Services that are "not within the scope of services for which the Commission has  
12 granted full pricing flexibility," will not be subject to detariffing, whether it is specifically mentioned in the  
13 rule or not. Adopting this change would protect against an unreasonably broad reading of this exception,  
14 but would still preserve the Commission's primary intent.

15 Second, industry proposed rule 5 states that "provisions pertaining to a Utility's obligations under  
16 state or federal law" are not eligible for detariffing. (G.O. 96-B PD, Appendix A, at p. 6). Regardless of  
17 whether carriers' legal obligations are memorialized in a tariff, those obligations must be honored.  
18 Removing tariff references to state and federal law will not strip those laws of their force. Most  
19 importantly, there are many laws that carriers must follow that are not in their tariffs. Forcing carriers to  
20 maintain tariffs for the sole purpose of restating existing law would make no sense. To the extent that  
21 carriers continue to rely on tariffs, those tariffs are intended to embody the terms and conditions of  
22 particular services. If a carrier elects to detariff, that purpose will be fulfilled by contract. Any references  
23 to a carrier's legal obligations in a tariff are duplicative of the original sources of those obligations. In  
24 almost all cases, these references are incomplete, and they could therefore be misleading if they were  
25 divorced from the context in which they currently appear. Carriers should only be required to maintain  
26 tariff obligations if the law specifically states that carriers must include it in their tariffs.

27 **E. The Commission Should Rely on Contract Law in Framing Carriers' and Customers'**  
28 **Obligations Under Term Agreements Rather Than Imposing a Blanket Notice and**  
**"Opt-Out" Provision.**

1 The decision to permit detariffing rests on the Commission's sound conclusion that "the  
2 requirements of Section 495.7 are satisfied by . . . existing statutes and rules." URF Tariffing PD, at p. 38).  
3 Notwithstanding this significant finding, the URF Tariffing PD would impose an unduly restrictive "opt  
4 out" mechanism on all term contracts that incorporate rates, terms, or conditions by reference. *Id.* Carriers  
5 offering these contracts would have to provide 30-days' notice of any rate increases and/or any contract  
6 changes that involve more restrictive terms and conditions. In these situations, carriers would have to give  
7 customers a 30-day period in which to opt out of the affected agreements.

8 The Commission should not interfere with established contract law by reading a blanket, one-size-  
9 fits-all requirement of this sort into all term contracts that rely on incorporation by reference. Carriers and  
10 customers should be free to structure their service agreements for their mutual benefit, and incorporation by  
11 reference is one of many contract tools that can simplify and streamline agreements that might otherwise be  
12 unnecessarily voluminous. In other cases, incorporation by reference can be used to create a common  
13 reference point for the parties regarding a variable rate, term, or condition. Although a rate may change,  
14 the mutually-agreed upon reference point remains the same, consistent with the parties' intent. Within the  
15 boundaries of contract law, this type of arrangement is a valid way for parties to memorialize an agreement.  
16 Contract law has been developed over decades to accommodate a variety of nuanced circumstances, and  
17 the Commission need not presuppose how the law may apply in a particular case. To the extent that a more  
18 restrictive rate, term, or condition defeats the parties' mutual assent, it will not be enforceable. The 30-day  
19 notice and "opt out" provision in the URF Tariffing PD could create disincentives to detariff certain  
20 services, to the detriment of customers, carriers, and the Commission alike. Contract law defines the  
21 boundaries of accepted contracting practices in a more organic way than the Commission's blanket rule.

22 **F. Web Posting of Obsolete Service Plans is Unduly Burdensome and Unnecessary.**

23 The URF Tariffing PD would also require that a carrier's retail rates be maintained on the carrier's  
24 web site for three years after they are no longer effective. The Commission does not state any basis for this  
25 requirement that legacy plans be web-posted, nor can this requirement be justified by anything in the record  
26 in the URF proceeding. By definition, these plans are no longer available to any current customers, so  
27 customers cannot derive any benefit from continued access to them. If a customer is searching for  
28 information about his or her current service terms, these legacy plans could be misleading, particularly if

1 the obsolete plans are similar to a customer's current service plan. It should be sufficient protection for  
2 customers that all current service plans be posted on the carriers' web sites, a requirement that SureWest  
3 does not oppose.

4 **III. WITH LIMITED REVISIONS AND CLARIFICATIONS,**  
5 **THE "TIER I" PROCEDURES ARE APPROPRIATE FOR**  
6 **PROCESSING URF ADVICE LETTERS.**

7 **A. URF Advice Letters Are Appropriately Considered Under "Tier I" of G.O. 96-B.**

8 The URF Tariffing PD correctly concludes that URF advice letters should be processed under a  
9 "Tier I" analysis, as outlined in G.O. 96-B. As the URF Tariffing PD notes, Tier I "advice letters are  
10 especially suitable for partly or fully deregulated industries." URF Tariffing PD, at p. 19. URF carriers  
11 operate in rapidly-changing, robustly-competitive markets in which they are called upon to adapt  
12 dynamically to competitors' offerings. This reality is what compelled the Commission to adopt a one-day  
13 effectiveness period for URF advice letters. The procedures under Tier I are a reasonable proxy for the  
14 "one-day effective" advice letter process in D.06-08-030. URF advice letters should be "effective pending  
15 disposition," and the range of possible protest grounds should be strictly limited. With some modest URF-  
16 specific revisions to account for the extensively deregulated URF environment, Tier I is an appropriate  
17 platform for processing tariff changes under URF.

18 **B. The Grounds for Protest of URF Advice Letters Should be Narrowed to Reflect the**  
19 **Particular Time-Sensitivity of URF Filings and the Deregulatory Environment in**  
20 **Which These Filings Are Made.**

21 The URF Tariffing PD outlines six grounds for protest of URF advice letters, consistent with the  
22 general grounds for protest in G.O. 96-B, General Rule 7.4.2. Only four of these six grounds are  
23 appropriate in the URF context. The URF Tariffing PD cites General Rule 7.4.2 for the proposition that  
24 "protests may not object on policy grounds to an advice letter where the relief requested is consistent with  
25 rules or directions established by a Commission order." (URF Tariffing PD, at p. 21). Further, the URF  
26 Tariffing PD recognizes that review of URF protests should be "relatively ministerial." *Id.* at 22.

27 Notwithstanding these limitations on parties' protest authority, sub-section (5) of General Rule  
28 7.4.2 provides that an advice letter may be protested based on an allegation that "the relief requested in the  
advice letter requires consideration in a formal hearing, or is otherwise inappropriate for advice letter  
process." (G.O. 96-B, General Rule 7.4.2(5)). This catch-all language could open up URF advice letters to



1 exactly the kind of policy-based protests that the Commission is trying to avoid in the URF context. If an  
2 advice letter is "consistent with rules or directions established by a Commission order," and it is not  
3 procedurally defective or contrary to existing law, how could it be "inappropriate for advice letter process?"  
4 (URF Tariffing PD, at p. 22; *G.O. 96-B*, General Rule 7.4.2(5)). Similarly, if it meets each of these  
5 standards, how could it "require consideration in a formal hearing?" (*G.O. 96-B*, General Rule 7.4.2(5)).  
6 This open-ended protest language could embolden parties to craft artful, policy-based protests under the  
7 guise of procedural defect.

8 Sub-section (6) of General Rule 7.4.2 is also inappropriate in the URF context. This sub-section  
9 would permit protests on the basis that the relief requested is "unjust, unreasonable, or discriminatory."  
10 (*G.O. 96-B*, General Rule 7.4.2(6)). It is not clear from the URF Tariffing PD whether the Commission  
11 intends to allow protests based on this sub-section, but this language would open the door for substantive,  
12 policy-based protests. The Commission should explicitly state in the URF Tariffing PD that this standard is  
13 not a valid basis for protest of an URF advice letter, and a similar statement should be incorporated into  
14 Appendix A of the *G.O. 96-B* PD.

15 Both sub-section (5) and sub-section (6) of General Rule 7.4.2 are unnecessary in light of the  
16 standard in sub-section (2). Under that sub-section, an advice letter is subject to protest if "the relief  
17 requested in the advice letter would violate statute or Commission order, or is not authorized by statute or  
18 Commission order on which the utility relies." (*G.O. 96-B*, General Rule 7.4.2(2)). This standard is largely  
19 duplicative of the "inappropriate for advice letter process" and "unjust, unreasonable, and discriminatory"  
20 standards in sub-sections (5) and (6), except that sub-section (2) links these generalized statements to legal  
21 standards. The standards in sub-sections (5) and (6) imply that there is an independent ground for protest  
22 beyond violations of Commission order or statute, whereas no such ground can exist given the flexible  
23 advice letter standards of the URF environment.

24 **C. The Commission Should Clarify the Non-Discrimination Standard Under Section**  
25 **8.2.2 of the Proposed G.O. 96-B Telecommunications Rules.**

26 Section 8.2.2 of the Proposed *G.O. 96-B* Telecommunications Industry Rules provides that "the  
27 rate or charge under a contract then in effect must be made available to any similarly situated customer that  
28 is willing to enter into a contract with the same terms and conditions of service." (*G.O. 96-B* PD,

1 Appendix A, at p. 13). SureWest certainly supports the spirit behind this statement, which is rooted in the  
2 non-discrimination standards of Public Utilities Code Section 453. However, Section 8.2.2 unnecessarily  
3 restates – and potentially modifies – the statutory bar on discrimination in utility service. In some cases,  
4 customers take service pursuant to term contracts that later become unavailable, but which are generally "in  
5 effect" in the sense that some customers are still governed by them. Section 8.2.2 should not be a basis for  
6 forcing carriers to give promotional contract rates to customers where those promotional rates are no longer  
7 being offered. SureWest recommends that Section 8.2.2 be removed, or it should at least be modified to  
8 clarify that it applies only to contracts "then available" rather than contracts "then in effect."

9 **IV. THE COMMISSION'S CONCLUSION REGARDING CARRIERS'**  
10 **AUTHORITY TO REMOVE ASYMMETRIC MARKETING, DISCLOSURE,**  
11 **AND ADMINISTRATIVE REGULATIONS IS WELL-REASONED**  
12 **AND IT SHOULD BE ADOPTED.**

13 The URF Tariffing PD properly upholds the intended meaning of D.06-08-030, Ordering  
14 Paragraph 27. As the URF Tariffing PD acknowledges, that ordering paragraph was "intended to permit  
15 carriers to file advice letters removing certain asymmetrical marketing, disclosure, and administrative  
16 requirements." (URF Tariffing PD, at p. 72, Conclusion of Law 27). As modified in the URF Tariffing  
17 PD, this requirement is subject to reasonable limitations. However, the Commission should not preclude  
18 further expansion of the regulatory parity principle embodied in Ordering Paragraph 21 of D.06-08-030. A  
19 level regulatory playing field is critical to fair, robust, even-handed competition, and the Commission  
20 should take whatever steps are necessary to eliminate disparities in regulation between similarly-situated  
21 providers. Whether these disparities are dismantled by advice letter, or whether they are addressed through  
22 an application process, the process of leveling the playing field should continue.

23 **V. CONCLUSION.**

24 With the clarifications and refinements offered above, SureWest supports both the URF  
25 Tariffing PD and the G.O. 96-B PD. SureWest urges the Commission to incorporate SureWest's  
26  
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1 proposed revisions into the final versions of these proposed decisions.

2 Dated this 13<sup>th</sup> day of August, 2007, at San Francisco, California.

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## Appendix A

### Recommended Changes to Proposed Ordering Paragraphs:

#### URF Tariffing Order

3. ~~Within the next 18 months, a~~ A carrier may detariff existing retail services and tariff sheets for those services by filing an advice letter that complies with the terms of General Order 96-B, General Rule 7.3.4, and does not purport to cancel:

- a. A tariff for basic service.
- b. A tariff that includes a requirement, condition, or obligation imposed through an enforcement, complaint, or merger proceeding.
- c. A tariff for 911 or other emergency services.
- d. A tariff relating to customer direct access to an interexchange carrier or customer choice of an interexchange carrier.
- e. A tariff for a service that was not granted full pricing flexibility in D.06-08-030 (e.g., resale services).
- f. A tariff containing obligations as a Carrier of Last Resort or other obligations under state and federal law.

1 CERTIFICATE OF SERVICE BY MAIL

2 I, Noel Gielegthem, declare:

3 I am a resident of the State of California, over the age of eighteen years, and not a party to the  
4 within action. My business address is COOPER, WHITE & COOPER LLP, 201 California Street,  
5 17<sup>th</sup> Floor, San Francisco, CA 94111.

6 On August 13, 2007, I served the

7  
8 **OPENING COMMENTS OF  
SUREWEST TELEPHONE (U 1015 C)**

9 **ON**

10 **OPINION CONSOLIDATING PROCEEDINGS, CLARIFYING RULES**  
11 **FOR ADVICE LETTERS UNDER THE UNIFORM REGULATORY FRAMEWORK, AND**  
12 **ADOPTING PROCEDURES FOR DETARIFFING**

13 **AND**

14 **OPINION ADOPTING TELECOMMUNICATIONS INDUSTRY RULES**

15 by sending via e-mail a searchable Adobe Acrobat PDF copy of this document to the parties on the  
16 attached service list who provided e-mail addresses. Hard copies were also served on parties who did  
17 not provide an e-mail address by placing a true and correct copy of these OPENING COMMENTS  
18 with the firm's mailing room personnel, for mailing in accordance with the firm's ordinary practices.

19 Hard copies were also mailed to ALJ Steven Kotz and Assigned Commissioner Chong's  
20 advisor Jane Whang.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed on August 13, 2007, at San Francisco, California.

23 

24 Noel Gielegthem  
25  
26  
27  
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